

APPEAL NO. 023092  
FILED JANUARY 30, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on November 6, 2002. The hearing officer determined that the appellant/cross-respondent (claimant) is not entitled to supplemental income benefits (SIBs) for the 2nd through the 18th compensable quarters. The hearing officer also determined that since the respondent/cross-appellant (carrier) failed to timely request a benefit review conference (BRC) after the Texas Workers' Compensation Commission (Commission) found that the claimant was entitled to SIBs for the 1st quarter, then the carrier has waived the right to contest the claimant's entitlement to SIBs for the 1st quarter and the claimant is thus so entitled. The claimant appeals the determinations regarding the 2nd through the 18th quarters, and the carrier appeals the waiver and 1st quarter entitlement determinations. In its response to the claimant's appeal, the carrier urges that the hearing officer be affirmed with respect to the 2nd through 18th quarters. We do not find a response to the carrier's appeal from the claimant in the file.

DECISION

Affirmed.

We first note that the "old" SIBs rules apply to this case. The parties stipulated that: (1) the claimant had an impairment rating (IR) of 15% or greater; (2) the claimant did not commute any of her impairment income benefits (IIBs); (3) the filing periods for the 1st through the 18th quarters ran from November 3, 1994, to April 28, 1999; and (4) the 1st through the 18th quarters ran from February 15, 1995, to August 10, 1999.

Sections 408.142(a) and 408.143 provide that an employee is entitled to SIBs when the IIBs period expires if the employee has: (1) an IR of at least 15%; (2) not returned to work or has earned less than 80% of the average weekly wage as a direct result of the impairment; (3) not elected to commute a portion of the IIBs; and (4) made a good faith effort to obtain employment commensurate with his or her ability to work. Whether good faith exists is a fact question for the hearing officer. Texas Workers' Compensation Commission Appeal No. 94150, decided March 22, 1994. A finding of no ability to work is a factual question for the hearing officer to resolve. Texas Workers' Compensation Commission Appeal No. 951204, decided September 6, 1995.

The 1989 Act provides that the hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). Where there are conflicts in the evidence, the hearing officer resolves the conflicts and determines what facts the evidence has established. As an appeals body, we will not substitute our judgment for that of the hearing officer when the determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v.

Bain, 709 S.W.2d 175, 176 (Tex. 1986); Texas Workers' Compensation Commission Appeal No. 950456, decided May 9, 1995.

The hearing officer determined that claimant did not make a good faith effort to search for employment during the filing periods for any of the quarters at issue. The claimant testified that she was not released to work, to her knowledge, by any of the doctors, and that she believed she could not work during each of the filing periods at issue. The claimant testified that her medical condition incapacitated her and introduced medical records to support her claim. The claimant said that she sustained a compensable injury to her right hand and low back on \_\_\_\_\_, and that she has had three subsequent surgeries stemming from her compensable injuries. Further, the claimant testified that she did not look for work during any of the filing periods. The hearing officer determined that claimant was able to perform some kind of work during the filing periods at issue, and that she did not meet the good faith SIBs requirement. Our review of the record does not indicate that the hearing officer's good faith determinations regarding the 2nd to 18th quarters are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, *supra*. Therefore, there is no basis for disturbing her decision on appeal.

The hearing officer did not err in determining that the carrier waived the right to contest the claimant's eligibility for 1st quarter SIBs. The hearing officer found that the Commission sent the carrier its approval for the claimant's first quarter SIBs benefits on July 9, 2002, and that the carrier did not request a BRC until August 8, 2002. Therefore, the carrier waived its right to contest the claimant's eligibility for 1st quarter SIBs, and she is thus entitled. See Section 408.147(b). Our review of the record does not indicate that the hearing officer's waiver and entitlement determinations regarding the 1st quarter are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, *supra*.

The hearing officer's decision and order is affirmed.

The true corporate name of the insurance carrier is **TRANSPORTATION INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION  
350 NORTH ST. PAUL STREET  
DALLAS, TEXAS 75201.**

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Terri Kay Oliver  
Appeals Judge

CONCUR:

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Chris Cowan  
Appeals Judge

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Gary L. Kilgore  
Appeals Judge